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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

12/26/2006

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.



## **DETAILED ACTION**

### ***Specification***

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

### ***Description***

2. The amendment filed 10-12-06 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the amendments to page 27 and pages 28-29.

Applicant is required to cancel the new matter in the reply to this Office Action.

Applicant now describes the nominal size being the diameter dimension on the longest axis. Applicant relies upon page 27, lines 11-13 for support of such amendments. However, such portion of the specification describes the size of the pores of the storage element not the "nominal size" of the particles as set forth by the amendments. If Applicant maintains such language the portion of the original application which describes such nominal size of the diameter should be set forth. See MPEP 714.02.

***Claim Rejections - 35 USC § 112***

3. Claims 5 and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. See discussion in preceding paragraph 2.

***Claim Language Interpretation***

4. The claim language is interpreted in light of the definitions set forth in the paragraph bridging pages 5-6. Any other claim terminology which has not been specifically defined will be interpreted in light of its broadest common definition. Therefore, in claims 1 and 10, it is claimed that the acceptance member is disposed “adjacent” to a body surface of the core. Since the term “adjacent” has not been specifically defined, the dictionary definition, i.e. “Close to, lying near”, will be applied. It is noted that the terminology “near” is considered relative. It is also noted claims 4 and 12 recite the element being a portion of the topsheet. Note page 21, line 18-page 22, line 3 of the instant specification. Therefore, an acceptance element anywhere on the article on the body surface of the core will be deemed to meet the independent claims and an acceptance element forming a portion of the topsheet will be deemed to meet claims 4 and 12. Also with respect to claims 5 and 15, see 2163.06, I. With regard to the claim terminology “fecal storage element”, Applicant’s 5-8-06 remarks refer to page 25, lines 8-10 of the instant application which sets forth that the storage element is a storage element which is “capable of storing viscous bodily wastes”. The remarks also refer to page 15, lines 25-27 of the application

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where a “viscous fluid bodily waste” is defined as “any waste discarded from the body having a viscosity greater than about 10cP and less than about  $2 \times 10^5$  cP at a shear rate of one l/sec” in a controlled stress rheometry test. Lines 15-18 of the same page 15 set forth that runny feces or menses are “viscous fluid bodily waste”. Finally, lines 29-31 of the same page 15 point out the viscosities of water and peanut butter for reference. In light of such disclosures, a “fecal storage element” as claimed will be interpreted as an element which is capable of storing fecal waste having a viscosity greater than about 10cP and less than about  $2 \times 10^5$  cP at a shear rate of one l/sec in a controlled stress rheometry test.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-7, 10-12 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al ‘208, and thereby Thompson ‘135, Kimberly-Clark EP ‘417, Moore et al ‘642 and Lash et al ‘022.

Claim 1: See Claim Language Interpretation section supra and Thompson ‘208 at Figures, col. 5, lines 39-44, col. 7, line 57-col. 8, line 6, col. 14, line 41-col. 19, line 2, and thereby Thompson ‘135 at especially the Figures and the entire disclosure of EP ‘471, col. 9, line 54-col. 14, line 38, col. 21, line 30-col. 21, line 2, and thereby Moore ‘642 at col. 1, lines 46-62 and Lash et al ‘022 at col. 4, line 29-col. 6, line 35 and col. 14, lines 55-58 and 64 et seq, i.e. Thompson et al teaches a disposable absorbent article for wearing on or about a lower torso of a wearer for receiving bodily exudates which comprises a topsheet, e.g., 9, a backsheet, e.g., 12,

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joined with the topsheet, an absorbent core, e.g., at least a layer of 11, an acceptance element, i.e. at least a portion of the topsheet, i.e. disposed adjacent the body surface of the core, which comprises at least one aperture having an area of between 0.2 sq. mm to 25 sq. mm (See Thompson '208 at col. 15, line 61-col. 16, line 12 and the paragraph bridging cols. 18-19, i.e. EP '417 teaches filaments of a certain diameter, a topsheet having a certain number of filaments per square inch to define openings of equal size therebetween, i.e. the area between the filaments per sq. inch calculated from such disclosed specifics includes apertures having an area as claimed), and a storage element, e.g., 10 or another layer of 11, between the acceptance element and the core. Claim 1 further requires 1) the storage element to have a compressive resistance of at least about 70%, 2) the apertures have an effective aperture size of between about 0.2 sq. mm to about 25 sq. mm and 3) the storage element being a "fecal storage element" and separate from the absorbent core. With regard to 1), while Thompson '208 teaches a layer 10 having resilience and a ratio of wet to dry caliper of at least 80%, and preventing flow interference while being form fitting and a layer 11 of curled, twisted, chemically stiffened and crosslinked fibers, such fibers having increased dry resilience, i.e. the ability to return toward an expanded original state upon release of a compressional force applied thereto, and retaining their configuration during use at the portions cited supra, Thompson et al does not teach such layers having a "compression resistance" of at least about 70%. It is however noted that at page 29, lines 8-23 of the instant specification that Applicants while expressing the desire for the storage element to resist compression when a force is applied to maintain a significant level of storage capacity and restore itself to substantially its original thickness when the force is removed, does not disclose the criticality of the specific resistance claimed, i.e. the criticality of 70% rather than, for

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example, 45%. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a compressive resistance of at least about 70% on the Thompson et al device since it has been held that where the general conditions of a claim are disclosed in the prior art as in the instant case, i.e. see discussion supra, it is not inventive to discover the optimum or workable ranges by routine experimentation. In re Aller, 105 USPQ 233. With regard to 2), see page 25, lines 2-5, of the instant application, and thereby Roe '338. Furthermore, see again the portions of Thompson '208 and EP '417 cited supra, i.e. the topsheet of Thompson et al comprises at least one aperture having an area of between 0.2 sq. mm to 25 sq. mm, e.g. apertures of equal size of such area, for enhanced acceptance of fluid. Therefore, it is the Examiner's first position that there is sufficient factual evidence for one to conclude that the topsheet of Thompson '208 would necessarily and inevitably include the claimed "effective aperture size" when tested according to the test set forth in Roe '338. Alternatively, the Examiner's second position, Thompson '208 teaches a topsheet which receives or accepts fluid. It is however noted that while at page 23, lines 19-25 of the instant specification Applicants express the desire for the acceptance element to pass waste therethrough, the criticality of the specific effective aperture size claimed enabling the element to do so is not set forth, e.g. the criticality of 30 sq. mm rather than 25 sq mm for example has not been set forth. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ an effective aperture size as claimed on the Thompson et al device, if not already, since it has been held that where the general conditions of a claim are disclosed in the prior art as in the instant case, i.e. see discussion supra, it is not inventive to discover the optimum or workable ranges by routine experimentation. In re Aller, 105 USPQ 233. With respect to 3), see the

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Claim Language Interpretation section supra and, in addition to the portions of the prior art already cited, see also col. 1, line 11-13, col. 13, lines 43-45 and col. 31, lines 40-42 of '208 and col. 3, lines 28-29 of '022, i.e. "capable of absorbing...body waste fluids such as urine and feces", i.e. capable of absorbing/holding fluid feces. Therefore, it is the Examiner's first position that the prior art teaches a storage element 10 or a layer or sheet of 11 which is separate from 11 or the remainder of the sheets of 11 and which is element which is capable of storing fecal waste having a viscosity greater than about 10cP and less than about  $2 \times 10^5$  cP at a shear rate of one l/sec in a controlled stress rheometry test, i.e. "viscous fluid bodily waste", because '208 and '022 disclose articles and/or components thereof capable of absorbing /holding menses, i.e. a "relatively thick fluid" and/or fluid feces which as disclosed by the instant application are "viscous fluid bodily wastes". Alternatively, the Examiner's second position, since '208 and '022 disclose articles and/or components capable of absorbing/holding menses, i.e. a "relatively thick fluid", or fluid feces, there is sufficient factual evidence for one to conclude that such would necessarily and inevitably include a viscosity greater than about 10cP and less than about  $2 \times 10^5$  cP at a shear rate of one l/sec when tested similarly to the claimed element, i.e. in a controlled stress rheometry test. Finally, the Examiner's third position, the prior art, at a minimum, discloses the desire that the article and/or components absorb/hold menses, i.e. a "relatively thick fluid" or fluid feces, i.e. relatively thick fluid bodily wastes, i.e. the same general conditions as those claimed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a storage element as claimed on the Thompson et al device, if not already, since it has been held that where the general conditions of a claim are disclosed in the prior art as in the instant case, i.e. see discussion supra, it is not



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inventive to discover the optimum or workable ranges, i.e. the claimed range of viscosity, by routine experimentation. In re Aller, 105 USPQ 233.

Claims 3-4: See portions of Thompson '208 and '135 cited with respect to claim 1 supra.

Claims 5-6: See portions of Thompson '208 and Lash et al '022 cited with respect to claim 1 supra, i.e. layer 11 includes layers having absorbent particles of the claimed size, i.e. the shape of the particles spherical, i.e. area is dII, and the first paragraph of col. 15 of '022, e.g. particle size greater than 1410 microns or 1.4 mm,.

Claims 5 and 7: See portions of Thompson '208 cited with respect to claim 1 supra, and paragraph bridging pages 28-29 of the instant application, i.e. layer 10 includes nonabsorbent, fibers, i.e. particles, with wettable surfaces, i.e. liquid insensitive fibers, which fibers have a dimension of the size claimed.

Claims 2 and 10-12 and 15-17: Applicant claims the acceptance element having an effective open area of at least 30%. However, see page 25, lines 2-5, of the instant application, and thereby Roe '338. Furthermore, see again the portions of Thompson '208 and EP '417 cited supra, i.e. the topsheet of Thompson et al includes an open area of 30-60% for enhanced acceptance of fluid. Therefore, it is the Examiner's first position that there is sufficient factual evidence for one to conclude that the topsheet of Thompson '208 would necessarily and inevitably include the claimed "effective open area" when tested according to the test set forth in Roe '338. Alternatively, the Examiner's second position, Thompson '208 teaches a topsheet which receives or accepts fluid. It is however noted that while at page 23, lines 8-13 of the instant specification Applicants express the desire for the acceptance element to pass waste therethrough, the criticality of the specific effective open area claimed enabling the element to do

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so is not set forth, e.g. the criticality of 30% rather than 28% for example has not been set forth. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ an effective open area of at least about 30 % on the Thompson et al device, if not already, since it has been held that where the general conditions of a claim are disclosed in the prior art as in the instant case, i.e. see discussion supra, it is not inventive to discover the optimum or workable ranges by routine experimentation. In re Aller, 105 USPQ 233.

### ***Response to Arguments***

7. Applicant's remarks with regard to the informalities have been noted but are either deemed moot in that such issues have not been reraised or are deemed not persuasive for the reasons set forth supra. With regard to the arguments with respect to the prior art, such arguments have been considered but are deemed not persuasive for the reasons set forth supra, e.g. they are not commensurate in scope with the disclosure, the claim language, the prior art teachings and/or the prior art rejections. For example, the prior art combination set forth on the second and third line from the bottom of the page 8 is not the art combination applied, i.e. Thompson '208 alone, or in combination .....and/or Lash. For another example, the first full paragraph on page 9 does not set forth the position set forth in the rejection only a part thereof. For a last example, the prior art rejection sets forth where Thomas teaches a storage element as claimed contrary to the arguments set forth in the first paragraph on page 10, see, e.g. the discussion of elements 10 and 11 and/or 3).

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

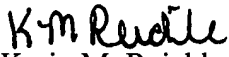
Any new grounds of rejection were necessitated by the amendments to page s27-29 and claims 5 and 15.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
November 30, 2006